

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Amendment No. 1 to  
FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

26-4413774

(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification No.)

7800 Shoal Creek Blvd, Suite 230-S  
Austin, Texas 78757  
(512) 693-4199

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Alan S. Knitowski, Chief Executive Officer  
Phunware, Inc.  
7800 Shoal Creek Blvd, Suite 230-S  
Austin, Texas 78757  
(512) 693-4199

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

Alex R. Allemann, Esq.  
Jeffrey M. McPhaul, Esq.  
Winstead PC  
401 Congress Ave., Suite 2100  
Austin, Texas 78701  
(512) 370-2800

Matt Aune  
J. Brendhan Botkin  
Phunware, Inc.  
7800 Shoal Creek Blvd, Suite 230-S  
Austin, Texas 78757  
(512) 693-4199

Approximate date of commencement of proposed sale to the public: **From time to time after the effective date of this Registration Statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

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**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Offering Price Per Share <sup>(2)</sup>	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee <sup>(5)</sup>
Common Stock, par value \$0.0001 per share issuable upon conversion of Series A Senior Convertible Note	18,314,769 <sup>(3)</sup>	\$0.905	\$ 16,574,866	\$ 1,808.32
Common Stock, par value \$0.0001 per share issuable upon exercise of an outstanding Warrant to Purchase Common Stock	2,160,000 <sup>(4)</sup>	\$0.905	1,954,800	213.27
<b>Total</b>	<u>20,474,769</u>		<u>\$ 18,529,666</u>	<u>\$ 2,021.59</u>

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall be deemed to cover an indeterminate number of additional shares to be offered or issued from stock splits, stock dividends or similar transactions with respect to the shares being registered.
- (2) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act. Based upon the average of the high and low prices of the registrant's common stock on October 6, 2020.
- (3) Represents a good faith estimate of the shares of common stock underlying a certain Series A Senior Convertible Note issued by the registrant in a private placement, with such amount equal to 300% of the maximum number of shares issuable upon conversion of such note, assuming for purposes hereof that (x) each such note is convertible at \$0.6996 per share, the alternate conversion price, and (y) interest on each such note accrues through December 31, 2021, without taking into account the limitations on the conversion of such note (as provided for therein).
- (4) Represents shares issuable upon exercise of a Warrant to Purchase Common Stock with an exercise price of \$4.00 per share. The number of shares of common stock included represents the maximum number of shares of common stock that may be issuable upon exercise of the Warrant.
- (5) Previously paid.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission acting pursuant to said Section 8(a), may determine.**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Subject to completion, dated October 9, 2020**

**PRELIMINARY PROSPECTUS**

**20,474,769 Shares of Common Stock**



This prospectus covers up to 20,474,769 shares of our common stock that may be offered for resale or otherwise disposed of by the selling stockholder set forth under the caption "Selling Stockholder" beginning on page 15 of this prospectus, including their pledges, assignees or successors-in-interest.

The shares of common stock offered for resale consist of shares underlying one Series A Senior Convertible Note (the "Series A Note") and shares issuable upon the exercise of a Warrant to Purchase Common Stock (the "Warrant") issued by us in a private placement in July 2020 (the "Private Placement").

We will not receive any proceeds from the sale or other disposition of the shares of common stock by the selling stockholder. Upon the exercise of the Warrant for 2,160,000 shares of our common stock by payment of cash, we will receive the exercise price of the Warrant, which is \$4.00 per share, or an aggregate of approximately \$8,640,000.

Our common stock is listed on the Nasdaq Capital Market under the symbol "PHUN." On October 8, 2020, the last reported sale price of our common stock on the Nasdaq Capital Market was \$0.9483 per share.

**We are an "emerging growth company," as defined under the federal securities laws, and, as such, may elect to comply with certain reduced public company reporting requirements for future filings.**

**Investing in our securities involves a high degree of risk. See the section entitled "Risk Factors" beginning on page 6 of this prospectus and under similar headings in the other documents that are incorporated by reference into this prospectus. You should carefully read and consider these risk factors before you invest in our securities.**

**You should rely only on the information contained in this prospectus or any prospectus supplement or amendment hereto. We have not authorized anyone to provide you with different information.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2020.**

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement filed with the Securities and Exchange Commission (the “SEC”) using a “shelf” registration process. Under this shelf registration process, the selling stockholder may, from time to time, offer and sell the shares of common stock described in this prospectus. This prospectus provides you with a general description of the securities which may be offered.

The registration statement that contains this prospectus (including the exhibits thereto) contains additional important information about us and the securities we may offer under this prospectus. It is important for you to read and consider all information contained in or incorporated by reference into this prospectus and any applicable prospectus supplements before making a decision to invest in our common stock. This prospectus incorporates by reference important business and financial information about us that is not included in or delivered with this document, as described in, “Where You Can Find More Information” and “Incorporation of Certain Information by Reference.” You should also read and consider the additional information contained in the documents we have incorporated into this prospectus by reference.

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement or amendment hereto. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making offers to sell or solicitations to buy the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making that offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation. You should not assume that the information in this prospectus or any prospectus supplement, as well as the information we file or previously filed with the SEC that we incorporate by reference in this prospectus or any prospectus supplement, is accurate as of any date other than its respective date. Our business, financial condition, results of operations and prospects may have changed since those dates.

The Phunware design logo and the Phunware mark appearing in this prospectus are the property of Phunware, Inc. Trade names, trademarks and service marks of other companies that may appear in this prospectus or any prospectus supplement are the property of their respective holders. We have omitted the ® and ™ designations, as applicable, for the trademarks used in this prospectus.

In this prospectus, unless the context otherwise requires, references to “we,” “us,” “our,” “our company,” “the Company,” or “Phunware” refer to Phunware, Inc. and its subsidiaries.

**This prospectus contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. Please read “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements.”**

## PROSPECTUS SUMMARY

*The following summary highlights information contained elsewhere or incorporated by reference into this prospectus. It may not contain all the information that may be important to you. You should read this entire prospectus, including all documents incorporated by reference, carefully, especially the "Risk Factors" contained in any applicable prospectus supplement and under similar headings in the other documents that are incorporated by reference into this prospectus, and our financial statements and related notes incorporated by reference in this prospectus before making an investment decision with respect to our securities. Please see the sections titled "Incorporation of Certain Information by Reference" and "Where You Can Find More Information" in this prospectus.*

### Overview

Phunware Inc. is a provider of the Multiscreen-as-a-Service ("MaaS") platform, a fully integrated enterprise cloud platform for mobile that provides companies the products, solutions, data and services necessary to engage, manage and monetize their mobile application portfolios and audiences at scale. According to Comscore's 2019 Mobile App Report, consumers in the U.S. spend 77% of their time online on a mobile device, and 89% of that time is spent in mobile apps (vs. mobile web). Given this reality, brands must establish a strong identity on mobile, especially on devices and platforms specific to the Apple iOS and Google Android operating systems and ecosystems. Phunware helps brands define, create, launch, promote, monetize and scale their mobile identities as a means to anchor the consumer journey and improve brand interactions. Our MaaS platform provides the entire mobile lifecycle of applications, media and data in one login through one procurement relationship.

Our MaaS platform allows for the licensing and creation of category-defining mobile experiences for brands and their application users worldwide. We have successfully expanded our addressable market reach into various important and fast-growing markets: mobile cloud software, media and data. Since our founding in 2009, we have amassed a database of proprietary Phunware IDs. Phunware IDs are unique identifiers assigned to a mobile device when it becomes first visible across our network of mobile application portfolios. We measure and accumulate Phunware IDs every month through queries that count unique devices that access our mobile application portfolio across our network of mobile applications that we have developed and/or support. The data collected from our Phunware IDs contributes to our application transaction and data subscription services revenue product lines by helping companies and brands boost campaign performance, target high-value users, maximize conversions and optimize spend.

Our business model includes a combination of subscription, transaction and service offerings that enable customers to engage, manage and monetize their mobile application portfolios throughout the mobile application lifecycle, which occurs in four phases:

- **Strategize** — We help brands define the application experience and determine the operating systems, feature sets and use cases they want their mobile application to support.
- **Create** — We help brands build, buy or lease their application portfolio.
- **Launch** — We help brands launch their applications and build their mobile audience.
- **Engage, Monetize and Optimize** — We help brands activate, monetize and optimize their mobile application portfolios.

We offer our platforms as Software-as-a-Service ("SaaS"), application transactions media and data licensing. Our business model includes recurring subscriptions, often as one-year to five-year software or data licenses, or transaction-based media insertion orders and application development services.

For a description of our business, financial condition, results of operations and other important information regarding our company, we refer you to our filings with the SEC incorporated by reference in this prospectus. For

instructions on how to find copies of these documents, see "Incorporation of Certain Information by Reference" and "Where You Can Find More Information."

### **Background of the Offering**

On July 14, 2020, we entered into a Securities Purchase Agreement (the "Purchase Agreement") with an institutional investor and on July 15, 2020 consummated the sale to such investor in a Private Placement of one Series A Note with an initial principal amount of \$4,320,000 and one Series B Note with an initial principal amount of \$17,280,000 (the "Series B Note," and together with the Series A Note, the "Senior Convertible Notes"). The Series A Note was sold with an original issue discount of \$320,000 and the Series B Note was sold with an original issue discount of \$1,280,000. As such, the investor paid for the Series A Note by delivering \$4,000,000 in cash consideration and paid for the Series B Note by delivering a secured promissory note (the "Investor Note") with an initial principal amount of \$16,000,000. We will receive cash in respect of a Series B Note only upon cash repayment of the corresponding Investor Note. In certain circumstances, the Investor Note may be satisfied through netting against the Series B Note rather than through the payment of cash. Until an Investor Note is repaid, the original issue discount and the principal under the corresponding Series B Note is considered to be "restricted." Upon any repayment of the Investor Note, the principal of the corresponding Series B Note becomes "unrestricted" on dollar-for-dollar basis, along with a proportional amount of the original issue discount. In connection with the Private Placement, we also issued the investor a Warrant exercisable for three (3) years for the purchase of an aggregate of up to 2,160,000 shares of our common stock, at an exercise price of \$4.00 per share.

Canaccord Genuity LLC was engaged as the sole placement agent for the Private Placement and received a placement agent fee of \$120,000 at the closing of the private placement, representing 3.0% of the gross cash proceeds at the closing. After deducting the placement agent fee and our estimated expenses associated with the Private Placement, our estimated net cash proceeds at the closing were approximately \$3,835,000. If the Investor Note is subsequently satisfied in full by payment in cash, the additional financial advisory fee on the cash proceeds received from the Investor Note will be another \$480,000, and the aggregate net cash proceeds from the Private Placement as a whole will be approximately \$19,355,000.

In connection with the Private Placement, we entered into a registration rights agreement (the "Registration Rights Agreement"), with the investor, among other agreements. In accordance with the terms of the Registration Rights Agreement, we are registering the shares underlying the Series A Note and Warrant for resale pursuant to this prospectus. The Private Placement, Purchase Agreement, Registration Rights Agreement and other related agreements are more fully described in "Private Placement of the Senior Convertible Notes and Warrant" below.

Promptly after the consummation of the Private Placement, we repaid in full the outstanding principal balance and all accrued but unpaid interest expense on a Senior Secured Note issued on March 20, 2020 to the same investor (the "March Note"). The cash payment to the investor to satisfy the March Note was in the amount \$2,084,080.98.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Continental Stock Transfer & Trust Company, located at One State Street Plaza, 30th Floor, New York, NY 10004-1561.



**Corporate Information**

The mailing address and telephone number of the Company is:

Phunware Inc.  
7800 Shoal Creek Boulevard  
Suite 230-S  
Austin, Texas 78757  
(512) 693-4199

## THE OFFERING

Common stock offered by the selling stockholder	20,474,769 shares <sup>(1)</sup>
Common stock outstanding prior to the offering	45,452,422 shares <sup>(2)(3)</sup>
Common stock outstanding after the offering	65,927,191 shares <sup>(3)(4)</sup>

Use of proceeds	We will not receive any proceeds from the sale of our securities offered by the selling stockholder under this prospectus, but we will receive the exercise price of the common stock Warrant at the time of exercise, which is \$4.00 per share. All the shares sold under this prospectus will be sold or otherwise disposed of for the account of the selling stockholder, or its pledgees, assignees or successors-in-interest. See "Use of Proceeds" beginning on page 14 of this prospectus.
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Nasdaq Capital Market ticker symbol	PHUN
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Risk Factors	See "Risk Factors" beginning on page 6 of this prospectus and the other information in or incorporated by reference into this prospectus for a discussion on the factors you should consider before making an investment decision.
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- (1) This amount includes the maximum number of shares of common stock that may be issuable upon exercise of the Warrant (2,160,000) and an estimate of the number of shares of our common stock underlying the Series A Note (18,314,769), such amount being equal to the maximum number of shares issuable upon conversion of the Series A Note, assuming for purposes hereof that (y) the Series A Note is convertible at \$0.6996 per share, the alternate conversion price, (z) interest on the Series A Note accrues through December 31, 2021, without taking into account the limitations on the conversion of the Series A Note as described elsewhere in this prospectus. The actual number of shares issued upon conversion of the Series A Note may be more or less than this amount. See "Risk Factors" and "Private Placement of the Senior Convertible Notes and Warrant" below.
- (2) Based on the outstanding shares of our common stock as of September 30, 2020.
- (3) This amount does not include:
  - 2,347,826 shares reserved for issuance upon the conversion of certain convertible notes initially offered in a private placement during 2019;
  - 3,836,112 shares of our common stock issuable upon the exercise of warrants outstanding as of September 30, 2020, with a weighted-average exercise price of \$11.25 per share;
  - 1,211,828 shares of our common stock reserved for future issuance under our 2009 Equity Incentive Plan (the "2009 Plan") as of September 30, 2020. The shares reserved for issuance under the 2009 Plan that expire or otherwise terminate without having been exercised in full and shares of common stock issued pursuant to awards granted under the 2009 Plan that are forfeited to or repurchased by us may be added to the 2018 Plan (defined below);
  - 2,192,392 shares of our common stock representing unvested stock awards under our 2018 Equity Incentive Plan (the "2018 Plan") as of September 30, 2020;
  - 101,873 shares of our common stock reserved for issuance and not subject to outstanding awards under the 2018 Plan (exclusive of the 2009 Plan shares that may be added as noted above) as of September 30, 2020; and
  - 272,942 shares of our common stock reserved for issuance pursuant to our 2018 Employee Stock Purchase Plan.
- (4) This amount includes the estimated 20,474,769 shares of our common stock underlying the Series A Note and Warrant and does not include any shares underlying the Series B Note.

## RISK FACTORS

Investing in our securities involves a high degree of risk. In addition to the following risk factors, please see the Risk Factors set forth in Part I, Item 1A of our most recent Annual Report on Form 10-K and other filings we make with the SEC, which are incorporated by reference in this prospectus. Additional risk factors may be included in a prospectus supplement relating to a particular offering of securities. Before making an investment decision, you should carefully consider these risks as well as other information we include or incorporate by reference in this prospectus. The risks and uncertainties we have described are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business operations. These risks could materially affect our business, results of operations or financial condition and cause the value of our securities to decline.

### Risks Related to the Company

*Our certificate of incorporation designates a state or federal court located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders, and also provide that the federal district courts will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act or Exchange Act, each of which could limit our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers, or employees.*

Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of Phunware, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee or agent to us or our stockholders, (iii) any action asserting a claim against us arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws, (iv) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws, or (v) any action asserting a claim against us governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. The foregoing exclusive forum provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Securities Act or Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction. Unless we consent in writing to the selection of an alternative forum, our certificate of incorporation provides that the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act or the Exchange Act.

Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions, provided, however, that the provision will not relieve the Company of its duties to comply with the federal securities laws and the rules and regulations thereunder, and stockholders of the Company will not be deemed to have waived the Company's compliance with these laws, rules and regulations.

These exclusive-forum provisions may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could harm its results of operations.

### Risks Related to the Offering

*A substantial number of shares of our common stock may be issued pursuant to the conversion terms of the Senior Convertible Notes and exercise of the Warrant, which could cause the price of our common stock to decline.*

The Senior Convertible Notes are immediately convertible upon issuance into shares of our common stock at an initial conversion price of \$3.00 per share, for an aggregate of 9,360,000 shares (based on \$21,600,000 in aggregate principal amount outstanding as of such date and the exercise of the Warrant in full for 2,160,000 shares) without taking into account the limitations on the conversion of the Senior Convertible Notes and exercise of the

Warrant as described elsewhere in this prospectus. The issuance of these shares will dilute our other equity holders, which could cause the price of our common stock to decline.

***Sales of substantial amounts of our common stock by the selling stockholders, or the perception that these sales could occur, could adversely affect the price of our common stock.***

The sale by the selling stockholders of a significant number of shares of common stock could have a material adverse effect on the market price of our common stock. In addition, the perception in the public markets that the selling stockholders may sell all or a portion of their shares as a result of the registration of such shares for resale pursuant to this prospectus could also in and of itself have a material adverse effect on the market price of our common stock. We cannot predict the effect, if any, that market sales of those shares of common stock or the availability of those shares of common stock for sale will have on the market price of our common stock.

***The requirement that we repay the Senior Convertible Notes and interest thereon in cash could adversely affect our business plan, liquidity, financial condition, and results of operations.***

We are required to make monthly installment payments to the noteholder to repay principal amounts outstanding under the Senior Convertible Notes and interest thereon in cash. These obligations could have important consequences on our business. In particular, they could:

- limit our flexibility in planning for, or reacting to, changes in our businesses and the industries in which we operate;
- increase our vulnerability to general adverse economic and industry conditions; and
- place us at a competitive disadvantage compared to our competitors.

No assurances can be given that we will be successful in making the required payments under the Senior Convertible Notes. If we are unable to make the required cash payments, there could be a default under the Senior Convertible Notes. In such event, or if a default otherwise occurs under the Senior Convertible Notes, including as a result of our failure to comply with the financial or other covenants contained therein, the holders of the Senior Convertible Notes could require us to immediately repay 115% of the outstanding principal and interest on the Senior Convertible Notes or an amount equal to the market value of the shares of our common stock underlying the Senior Convertible Notes, as determined in accordance with the Senior Convertible Notes, in cash, if greater.

***Restricted covenants under the Senior Convertible Notes could limit our growth and our ability to finance our operations, fund our capital needs, respond to changing conditions and engage in other business activities that may be in our best interests.***

The Senior Convertible Notes contain a number of affirmative and negative covenants regarding the incurrence of certain indebtedness, the existence of liens, the repayment of indebtedness, the payment of cash in respect to dividends, distributions or redemptions, and the transfer of assets among other matters. We are also subject to a financial covenant that requires us to maintain available cash in the amount of \$500,000 at the end of each figure quarter, subject to a right of cure.

Our ability to comply with these covenants may be adversely affected by events beyond our control, and we cannot assure you that we can maintain compliance with these covenants. The financial covenants could limit our ability to make needed expenditures or otherwise conduct necessary or desirable business activities.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference herein include forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

These forward-looking statements include, but are not limited to, statements regarding our industry, future events, future opportunities for our company, estimates of our total addressable market, and projections of customer savings. These statements are based on various assumptions and on the current expectations of management and are not predictions of actual performance, nor are these statements of historical facts. These statements are subject to a number of risks and uncertainties regarding our business, and actual results may differ materially. These risks and uncertainties include, but are not limited to, changes in the business environment in which we operate, including inflation and interest rates, and general financial, economic, regulatory and political conditions affecting the industry in which we operate; adverse litigation developments; inability to refinance existing debt on favorable terms; changes in taxes, governmental laws, and regulations; competitive product and pricing activity; difficulties of managing growth profitably; the loss of one or more members of our management team; uncertainty as to the long-term value of Phunware, Inc. common stock; the inability to realize the expected amount and timing of cost savings and operating synergies; those discussed in the Annual Report on Form 10-K for the year ended December 31, 2019 under the heading “Risk Factors,” as updated from time to time by the Quarterly Reports on Form 10-Q and other documents we file with the SEC. There may be additional risks that we presently know or that we currently believe are immaterial that could also cause actual results to differ from those contained in the forward-looking statements. In addition, forward-looking statements provide our expectations, plans or forecasts of future events and views as of the date of this communication. We anticipate that subsequent events and developments will cause our assessments to change. However, while we may elect to update these forward-looking statements at some point in the future, we specifically disclaim any obligation to do so. These forward-looking statements should not be relied upon as representing our assessments as of any date subsequent to the date of this communication.

## PRIVATE PLACEMENT OF THE SENIOR CONVERTIBLE NOTES AND WARRANT

On July 14, 2020, we entered into the Purchase Agreement with an institutional investor (the “Investor”) and consummated the sale to such Investor of one Series A Note with an initial principal amount of \$4,320,000 and one Series B Note with an initial principal amount of \$17,280,000 in a Private Placement that closed on July 15, 2020.

The Series A Note was sold with an original issue discount of \$320,000 and the Series B Note was sold with an original issue discount of \$1,280,000. As such, the Investor paid for the Series A Note to be issued to such Investor by delivering \$4,000,000 in cash consideration and paid for the Series B Note to be issued to such Investor by delivering a secured Investor Note with an initial principal amount of \$16,000,000. We will receive cash in respect of a Series B Note only upon cash repayment of the corresponding Investor Note. In certain circumstances, the Investor Note is automatically satisfied through netting against the Series B Note, as described more fully below, rather than through the payment of cash. Until an Investor Note is repaid, the original issue discount and the rest of the principal under the corresponding Series B Note is considered to be “restricted.” Upon any repayment of the Investor Note, the principal of the corresponding Series B Note becomes “unrestricted” on dollar-for-dollar basis, along with a proportional amount of the original issue discount.

Canaccord Genuity LLC (“Canaccord”) was engaged as the sole placement agent for the Private Placement. Canaccord received a placement agent fee of \$120,000 at the closing of the Private Placement, representing 3.0% of the gross cash proceeds at the closing. After deducting the placement agent fee and our estimated expenses associated with the Private Placement, our estimated net cash proceeds at the closing were approximately \$3,835,000. If the Investor Note is subsequently satisfied in full by payment in cash, we anticipate the additional financial advisory fee on the cash proceeds received from the Investor Note will be another \$480,000, and the aggregate net cash proceeds from the Private Placement as a whole will be approximately \$19,355,000.

Promptly after the consummation of the sale of the Senior Convertible Notes, we repaid in full the outstanding principal balance and all accrued but unpaid interest expense on the Senior Secured Note issued on March 20, 2020 to the same Investor. The cash payment to the Investor to satisfy the March 2020 Note was in the amount \$2,084,080.98.

### Purchase Agreement

The Purchase Agreement contains certain representations and warranties, covenants and indemnities customary for similar transactions. Under the Purchase Agreement, we also agreed to the following additional covenants:

- So long as the Senior Convertible Notes remain outstanding, we will not effect or enter an agreement to effect any variable rate transaction other than a bona fide at-the-market offering or equity line of credit.
- We also agreed to hold a stockholder meeting by no later than December 31, 2020, to approve resolutions authorizing the issuance of shares of our common stock under the Senior Convertible Notes for the purposes of compliance with the stockholder approval rules of The Nasdaq Stock Market (“Nasdaq”). We will be obligated to continue to seek stockholder approval quarterly until such approval is obtained.

In addition, we granted the Investor participation rights in future equity and equity-linked offerings of securities, subject to certain limited exceptions, during the two years after the later of (a) the closing or (b) the date the Investor Note no longer remains outstanding, in an amount of up to 30% of the securities being sold in such offerings.

### Senior Convertible Notes

#### *General*

The Senior Convertible Notes were issued to the Investor on July 15, 2020 and mature on December 31, 2021 (subject to extension in certain circumstances, including bankruptcy and outstanding events of default).

#### *Amortization*

Starting on July 31, 2020 and on the last trading day of the month for each month thereafter, and on the maturity date (each, an "Installment Date"), unless deferred as described below, the Company is required to make monthly amortization payments equal to 1/18th of the unrestricted principal (and related unrestricted original issue discount) and interest of the Senior Convertible Notes payable (the "Installment Amount"), which must be satisfied in cash at a redemption price equal to 107% of such Installment Amount (each, an "Installment Redemption"). Installment Amounts will be automatically deferred to the extent due in respect of restricted principal (and related restricted original issue discount) under Series B Note, until they become unrestricted or netted against the Investor Note as described below.

Notwithstanding the foregoing, the noteholder may, at its sole option, elect to defer any Installment Amount until a subsequent Installment Date selected by the noteholder, provided that any such deferred amounts shall not continue to accrue interest unless the deferral is at the request of the Company.

#### *Interest*

The Senior Convertible Notes each bear interest at a rate of 7% per annum on unrestricted principal (and related restricted original issue discount) and 3% per annum on restricted principal (and related restricted original issue discount) (under the Series B Note) and, upon any conversion or redemption, shall include a make-whole of interest from such date of determination through the maturity date. After the occurrence and during the continuance of an Event of Default (as defined in the Senior Convertible Notes), the Senior Convertible Notes will accrue interest at the rate of 18% per annum. See "*Events of Default*" below.

#### *Conversion; Alternate Conversion upon Event of Default*

Each Senior Convertible Note (other than restricted amounts under a Series B Note) is convertible, at the option of the noteholder, into shares of our common stock at a conversion price of \$3.00 per share. The conversion price is subject to full ratchet antidilution protection upon any subsequent transaction at a fixed price lower than the conversion price then in effect and standard adjustments in the event of any stock split, stock dividend, stock combination, recapitalization or other similar transaction. If we enter into any agreement to issue (or issue) any variable rate securities, other than a bona fide at-the-market offering or equity line of credit, the noteholder has the additional right to substitute such variable price (or formula) for the conversion price.

If an Event of Default has occurred under the Senior Convertible Notes, the noteholder may elect to alternatively convert the Senior Convertible Notes at a redemption premium of 115% at an alternate conversion price equal to the lower of (x) the conversion price then in effect and (y) the greater of the Floor Price (which is \$0.260 as defined in the Senior Convertible Notes) and 85% of the lowest volume weighted average price in the 10 days prior to the applicable conversion date.

#### *Conversion Limitation and Exchange Cap*

The noteholder will not have the right to convert any portion of a Senior Convertible Notes, to the extent that, after giving effect to such conversion, the noteholder (together with certain related parties) would beneficially own in excess of 4.99% of the shares of our common stock outstanding immediately after giving effect to such conversion. The noteholder may from time to time increase this limit to 9.99%, provided that any such increase will not be effective until the 61st day after delivery of a notice to us of such increase.

In addition, unless we obtain the approval of our stockholders as required by Nasdaq, we are prohibited from issuing any shares of common stock upon conversion of the Senior Convertible Notes or otherwise pursuant to the terms of the Senior Convertible Notes, if the issuance of such shares of common stock would exceed 19.99% of our outstanding shares of common stock as of July 15, 2020 or otherwise exceed the aggregate number of shares of common stock which we may issue without breaching our obligations under the rules and regulations of Nasdaq.

### *Events of Default*

The Senior Convertible Notes include certain customary and other Events of Default, including, among other things, failure to maintain an effective shelf registration statement with capacity to issue an offering amount equal to at least 125% of unrestricted principal, the breach of the financial covenant described in “Covenants” below and the termination of Alan Knitowski, our Chief Executive Officer and Randall Crowder, our Chief Operating Officer, by the Company for any reason other than such person’s death, disability or willful misconduct.

In connection with an Event of Default, the noteholder may require us to redeem in cash any or all of the Senior Convertible Notes. The redemption price will equal 115% of the outstanding principal of the Senior Convertible Note to be redeemed, and accrued and unpaid interest and unpaid late charges thereon, or an amount equal to market value of the shares of our common stock underlying the Senior Convertible Note, as determined in accordance with the Senior Convertible Note, if greater.

### *Change of Control*

In connection with a Change of Control (as defined in the Senior Convertible Notes), a noteholder may require us to redeem all or any portion of the Senior Convertible Notes. The redemption price per share will equal the greatest of (i) 115% of the outstanding principal of the Senior Convertible Note to be redeemed, and accrued and unpaid interest and unpaid late charges thereon, (ii) 115% of the market value of the shares of our common stock underlying the Senior Convertible Note, as determined in accordance with the Senior Convertible Note, and (iii) 115% of the aggregate cash consideration that would have been payable in respect of the shares of our common stock underlying the Senior Convertible Note, as determined in accordance with the Senior Convertible Note.

### *Subsequent Placement Optional Redemption*

At any time after the earlier of the date a noteholder becomes aware of any placement by us of equity or equity-linked securities or the date of consummation of such a placement, subject to certain limited exceptions, the noteholder will have the right to have us redeem a portion of each Senior Convertible Note not in excess of 40% of the net proceeds from such placement at a redemption price of 107% of the portion of the Senior Convertible Note subject to redemption (or, if greater, the market value of the shares underlying the Senior Convertible Note).

### *Covenants*

We will be subject to certain customary affirmative and negative covenants regarding the incurrence of certain indebtedness, the existence of liens, the repayment of indebtedness, the payment of cash in respect of dividends, distributions or redemptions, and the transfer of assets, among other matters. We also will be subject to a financial covenant that requires us to maintain available cash in the amount of \$500,000 at the end of each fiscal quarter, subject to a right to cure.

### *Company Optional Redemption Rights*

We may redeem the Senior Convertible Notes at a price equal to 107% of the outstanding principal of the Senior Convertible Notes (or, if greater, the market value of the shares underlying the Senior Convertible Notes) to be redeemed and accrued and unpaid interest and unpaid late charges thereon.

### *Netting Under Series B Notes*

Pursuant to the Investor Note and a Master Netting Agreement, dated as of July 15, 2020 (the “Master Netting Agreement”), between the Investor and us, upon any required redemption of any portion of the Senior Convertible Notes that consists of restricted principal (whether due to our optional redemption right, acceleration upon an event of default, bankruptcy, a prohibited transfer of a Series B Note or otherwise), the corresponding portion of the Series B Note shall be automatically offset and cancelled; provided, that (i) if such netting occurred as a result of the occurrence of an Event of Default or Change of Control, the original issue discount with respect to such Series B Note associated with the principal amount thereof being netted against will remain outstanding and



will not be deemed satisfied or (ii) otherwise, the associated original issue discount with respect to such Series B Note will be deemed cancelled concurrently with such netting event.

#### Investor Note

The Investor Note was issued pursuant to a Note Purchase Agreement, dated as of July 14, 2020 (the “NPA”), by and between the Investor and us.

The Investor’s obligation to pay us the amount of principal outstanding pursuant to the applicable Investor Note is to be secured by an equal amount of cash, cash equivalents, or currency, notes or securities backed by certain governments. The Investor may, at its option and at any time, voluntarily prepay an Investor Note, in whole or in part. In addition, the Investor Note is subject to mandatory prepayment, in whole or in part, upon the occurrence of certain events:

- The Investor will be required to prepay the Investor Note in certain amounts (each a “Mandatory Prepayment”) on the 30th trading day after the effectiveness of a resale registration statement (or the availability of Rule 144 promulgated under the Securities Act of 1933, as amended) if certain equity and other conditions are satisfied as of such date. The equity and other conditions include minimum price and volume thresholds, a minimum market capitalization at least \$40 million, and a requirement that we have available shelf registered placement capacity equal to at least 300% of the unrestricted principal outstanding under the Senior Convertible Notes (including the Mandatory Prepayment Amount).
- Mandatory Prepayments may not exceed the lesser of (a) such aggregate amount of principal outstanding under the Investor Note and (b) such aggregate amount of principal outstanding under the Investor Note that, together with the unrestricted principal would not exceed the lesser of (i) \$5 million and (ii) 10% of the 30 trading day market capitalization of the Company.
- If the Investor desires to voluntarily convert any restricted amount of a Series B Note, the corresponding Investor Note will be subject to a mandatory prepayment in an amount equal to such restricted principal then subject to conversion.

Under the Investor Note, there are certain automatic offset rights, which, if triggered, would reduce the amount outstanding under the Series B Note and Investor Note and, accordingly, the cash proceeds received by us from the Investors in this offering. See “*Netting Under Series B Notes*” above.

#### Warrant

In addition to the Senior Convertible Notes, we issued a Warrant exercisable for three (3) years for the purchase of an aggregate of up to 2,160,000 shares of Common Stock (the “Warrant Shares”), at an exercise price of \$4.00 per share. The number of Warrant Shares and exercise price are each subject to adjustment provided under the Warrant. If, at the time of exercise of the Warrant, there is no effective registration statement registering, or no current prospectus available for, the issuance of the Warrant Shares to the Investor, then the Warrant may also be exercised, in whole or in part, by means of a “cashless exercise.” The Warrant may not be exercised if, after giving effect to the exercise the Investor, together with its Attribution Parties (as defined in the Warrant), would beneficially own in excess of 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of the Warrant Shares. At the Investor’s option, the ownership limitation blocker may be raised or lowered to any other percentage not in excess of 9.99%, as applicable, except that any raise will only be effective upon 61-days’ prior notice to the Company. In addition, the Warrant limits the number of Warrant Shares for which it is exercisable to an amount equal to 30% of the quotient of (i) the sum of the aggregate amount of unrestricted principal and unrestricted original issue discount, divided by (ii) \$3.00.

If the Company issues or sells, or the Company publicly announces the issuance or sale of, any shares of Common Stock, or convertible securities or options issuable or exchangeable into Common Stock (a “New Issuance”), under which such Common Stock is sold for a consideration per share less than the exercise price then in effect, the exercise price of the Warrant will be adjusted to the New Issuance price in accordance with the formulas provided in the Warrant. Any such adjustment will not apply with respect to the issuance of Excluded Securities (as defined in the Warrant). Upon any adjustment to the exercise price, the number of Warrant Shares that may be purchased upon exercise of the Warrant will be increased or decreased proportionately, so that after such adjustment

the aggregate exercise price payable for the adjusted number of Warrant Shares will be the same as the aggregate exercise price in effect immediately prior to such adjustment. In addition, if the Company enters into a Fundamental Transaction (as defined in the Warrants) at any time that a Warrant is outstanding, then, upon any subsequent exercise of the Warrant, the Investor will have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Warrant is exercisable immediately prior to such Fundamental Transaction, provided, further, that if holders of Common Stock are not offered or paid any consideration in such Fundamental Transaction, such holder of Common Stock will be deemed to have received common stock of the successor entity (which entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction.

#### Registration Rights Agreement

Pursuant to a Registration Rights Agreement, dated as of July 15, 2020 between the Investor and us, we have granted certain registration rights to the noteholder. The Registration Rights Agreement requires us to have the registration statement of which this prospectus is a part declared effective by October 13, 2020. It also grants the Investor customary “piggyback” registration rights. If we fail to file the registration statement or have it declared effective by the deadline above, or if certain other conditions relating to the availability of the registration statement and current public information are not met, we will pay certain Registration Delay Payments to such noteholder (as defined in the Registration Rights Agreement).

#### Additional Information

The foregoing is only a summary of the material terms of the Purchase Agreement, the Senior Convertible Notes, the Investor Note, the Warrant, the Master Netting Agreement, the Registration Rights Agreement and the other ancillary transaction documents (collectively, the “Transaction Documents”), and does not purport to be a complete description of the rights and obligations of the parties thereunder.

The summary of the Transaction Documents is qualified in its entirety by reference to the forms of such agreements, which are incorporated as exhibits to the Registration Statement of which this prospectus forms a part and are incorporated herein by reference.

The foregoing summary and the exhibits hereto also are not intended to modify or supplement any disclosures about us in our reports filed with the Securities and Exchange Commission. In particular, the agreements and the related summary are not intended to be, and should not be relied upon, as disclosures regarding any facts and circumstances relating to the Company or any of its subsidiaries or affiliates. The agreements contain representations and warranties by us, which were made only for purposes of that agreements and as of specified dates. The representations, warranties and covenants in the agreements were made solely for the benefit of the parties to the agreements; may be subject to limitations agreed upon by the contracting parties, including being subject to confidential disclosures that may modify, qualify or create exceptions to such representations and warranties; may be made for the purposes of allocating contractual risk between the parties to the agreements instead of establishing these matters as facts; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. In addition, information concerning the subject matter of the representations, warranties and covenants may change after the date of the agreements, which subsequent information may or may not be fully reflected in our public disclosures.

#### USE OF PROCEEDS

We will not receive any proceeds from the sale of our securities offered by the selling stockholder under this prospectus. All the shares sold under this prospectus will be sold or otherwise disposed of for the account of the selling stockholder, or its pledgees, assignees or successors-in-interest.

The Warrant will not, upon effectiveness (and continued effectiveness) of the registration statement of which this prospectus is a part, be eligible for cashless exercise. There is no assurance that the Warrant will ever be exercised for cash. However, assuming the exercise of the Warrant for cash in full, at an exercise price of \$4.00 per share, the selling stockholder would pay us aggregate consideration of \$8,640,000, for the issuance of shares of common stock thereunder. The proceeds to us of such Warrant exercise, if any, will not be subject to any restrictions. We plan to use any cash received from the exercise of the Warrant for general corporate purposes. We cannot precisely estimate the allocation of the proceeds from any exercise of the Warrant for cash. Accordingly, in the event the Warrant is exercised for cash, our management will have broad discretion in the application of the proceeds of such exercise.

## SELLING STOCKHOLDER

The shares of common stock being offered by the selling stockholder are those issuable to the selling stockholder upon conversion of the Series A Note and exercise of the Warrant. For additional information regarding the issuance of the Series A Note and the Warrant, see "Private Placement of Senior Convertible Notes and Warrant" above. We are registering the shares of common stock in order to permit the selling stockholder to offer the shares for resale from time to time. Except for the purchase and ownership of the March 2020 Note issued pursuant to a securities purchase agreement dated March 19, 2020 and the Senior Convertible Notes and the Warrant issued pursuant to the Securities Purchase Agreement (described above), the selling stockholder has not had any material relationship with us within the past three years.

The table below lists the selling stockholder and other information regarding the beneficial ownership (as determined under Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder) of the shares of common stock held by the selling stockholder. The second column lists the number of shares (and percentage) of common stock beneficially owned by the selling stockholder, based on their ownership of shares of common stock and Senior Convertible Notes and Warrant, as of October 5, 2020, assuming conversion of the Senior Convertible Notes and exercise of the warrant in full held by such selling stockholder on that date but taking account of any limitations on conversion set forth therein.

The third column lists the shares of common stock being offered by this prospectus by the selling stockholder and does not take in account any limitations on (i) conversion of the Senior Convertible Notes set forth therein or (ii) exercise of the Warrant set forth therein.

In accordance with the terms of a registration rights agreement with the holder of the Senior Convertible Notes and the Warrant, this prospectus generally covers the resale of (i) the sum of the maximum number of shares of common stock issued or issuable pursuant to the Series A Note, including payment of interest on the Series A Note through December 31, 2021 at the alternate conversion price of \$0.6996 per share, and (ii) the maximum number of shares of common stock issued or issuable upon exercise of the Warrant, in each case determined as if the outstanding Series A Note (including interest on the note through December 31, 2021) and Warrant were converted or exercised (as the case may be) in full (without regard to any limitations on conversion or exercise contained therein solely for the purpose of such calculation). This prospectus does not cover the resale of shares of common stock issued or issuable pursuant to the Series B Note. Because the conversion price of the Series A Note and the exercise price of the Warrant may be adjusted, the number of shares that will actually be issued may be more or less than the number of shares being offered by this prospectus. The fourth column assumes the sale of all of the shares offered by the selling stockholder pursuant to this prospectus.

Under the terms of the Senior Convertible Notes and Warrant, the selling stockholder may not convert the Senior Convertible Notes or exercise the Warrant to the extent (but only to the extent) such selling stockholder or any of its affiliates would beneficially own a number of shares of our common stock which would exceed 4.99% of the outstanding shares of the Company. The number of shares in the second column reflects these limitations. The selling stockholder may sell all, some or none of their shares in this offering. See "Plan of Distribution."

Name of Selling Stockholder	Number of Shares of Common Stock Beneficially Owned Prior to the Offering <sup>(1)(3)</sup>		Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus	Number of Shares of Common Stock Beneficially Owned After the Offering <sup>(1)</sup>	
	Shares	Percent		Shares	Percent
Alto Opportunity Master Fund, SPC - Segregated Master Portfolio B <sup>(2)</sup>	2,387,196	4.99%	20,474,769	—	—

<sup>(1)</sup> The percentage of ownership before the offering is calculated based on 45,452,422 shares outstanding as of September 30, 2020. The percentage of ownership after the offering assumes the issuance of all of the shares underlying the Series A Note and Warrant that are offered for resale hereby, and the sale by such selling stockholder of all of the shares offered for resale hereby.

<sup>(2)</sup> Ayrton Capital LLC, the investment manager to Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B, (“Alto Opportunity Master Fund B”), has discretionary authority to vote and dispose of the shares held by Alto Opportunity Master Fund B. Waqas Khatri is the managing member of Ayrton Capital LLC and in his capacity as director of Alto Opportunity Master Fund B, may also be deemed to have investment discretion and voting power over the shares held by Alto Opportunity Master Fund B. Mr. Khatri disclaims any beneficial ownership of these shares. The address of Ayrton Capital, LLC is 222 Broadway, 19th Floor, New York, NY 10038.

<sup>(3)</sup> The beneficial ownership of Alto Opportunity Master Fund B consists entirely of shares underlying the Senior Convertible Notes and Warrant. The amounts set forth in the table reflect the application of the 4.99% limitation and assume the immediate conversion of the Senior Convertible Notes and exercise of the Warrant. Without giving effect to the 4.99% limitation, the maximum number of shares into which the Senior Convertible Notes and Warrant held by Alto Opportunity Master Fund B would be convertible and exercisable, respectively, would be approximately 18,314,769 shares of common stock, based on an assumed price of \$0.6996 per share, the alternate conversion price under the Senior Convertible Notes and exercise of the Warrant for 2,160,000 shares of common stock.

## PLAN OF DISTRIBUTION

We are registering the shares of common stock issuable upon conversion of the Series A Note and the exercise of the Warrant to permit the resale of these shares of common stock by the holder of the Series A Note and Warrant from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholder of the shares of common stock, although we may receive cash from the exercise of the Warrant, in the event that it is not exercised by the selling stockholder on a cashless exercise basis. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholder may sell all or a portion of the shares of common stock held by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholder will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions other than those on these exchanges or systems or in the over-the-counter market;
- through the writing or settlement of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales made after the date the Registration Statement is declared effective by the SEC;
- broker-dealers may agree with a selling security holder to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholder may also sell shares of common stock under Rule 144 promulgated under the Securities Act of 1933, as amended, if available, rather than under this prospectus. In addition, the selling stockholder may transfer the shares of common stock by other means not described in this prospectus. If the selling stockholder effects such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholder or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling stockholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling stockholder may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholder may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling stockholder may pledge or grant a security interest in some or all of the notes, warrant or shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling stockholder(s) to include the pledgee, transferee or other successors in interest as selling stockholder under this prospectus. The selling stockholder also may transfer and donate the shares of common stock

in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

To the extent required by the Securities Act and the rules and regulations thereunder, the selling stockholder and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed, which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholder(s) and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that the selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholder and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholder and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, including, without limitation, SEC filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholder against liabilities, including some liabilities under the Securities Act in accordance with the registration rights agreements or the selling stockholder will be entitled to contribution. We may be indemnified by the selling stockholder against civil liabilities, including liabilities under the Securities Act that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the related registration rights agreements or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

#### **LEGAL MATTERS**

Unless otherwise indicated in an applicable prospectus supplement, the validity of any securities to be offered hereby will be passed upon for us by our counsel, Winstead PC, Austin, Texas. Any underwriters will be represented by their own legal counsel.



## EXPERTS

The consolidated financial statements of Phunware, Inc. as of and for the years ended December 31, 2019 and 2018 included in our Annual Report on Form 10-K for the year ended December 31, 2019, incorporated by reference in this prospectus, have been audited by Marcum LLP, an independent registered public accounting firm, and are included in reliance upon such report given on the authority of such firm as an expert in accounting and auditing. As set forth in their report thereon, (i) an explanatory paragraph describing conditions that raise substantial doubt about Phunware's ability to continue as a going concern for each of the two years in the period ended December 31, 2019 and (ii) an explanatory paragraph describing a change in accounting principle related to the adoption of Accounting Standards Codification No. 606.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information into this prospectus, which means that we can disclose important information about our company by referring you to another document filed separately with the SEC. These other documents contain important information about us, our financial condition and our results of operations. The information incorporated by reference is considered to be a part of this prospectus. You should read carefully the information incorporated herein by reference because it is an important part of this prospectus. We hereby incorporate by reference the following documents into this prospectus:

- Our Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC on March 30, 2020, and as amended by Form 10-K/A filed with the SEC on April 29, 2020;
- Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020 filed with the SEC on May 15, 2020 and August 14, 2020, respectively;
- Our Current Reports on Form 8-K (and amendments thereto as applicable) as filed with the SEC on January 2, 2020, January 10, 2020, March 23, 2020, April 1, 2020, April 16, 2020, April 17, 2020, May 15, 2020, May 22, 2020, June 4, 2020, July 16, 2020, August 14, 2020 and August 17, 2020;
- Our preliminary proxy statement on Schedule 14A as filed with the SEC on October 5, 2020; and
- The description of the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form 8-A filed with the SEC on August 18, 2016 pursuant to Section 12(b) of the Exchange Act, which description has been updated most recently in the Registrant’s prospectus filed with the SEC on November 14, 2018 pursuant to Rule 424(b) under the Securities Act, relating to the Registration Statement on Form S-4, as amended.

Additionally, all documents filed by us with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than any portions of filings that are furnished rather than filed pursuant to Items 2.02 and 7.01 of a Current Report on Form 8-K), after the date of this prospectus and before the termination or completion of this offering (including all such documents filed with the SEC after the date of the initial registration statement and prior to the effectiveness of the registration statement) shall be deemed to be incorporated by reference into this prospectus from the respective dates of filing of such documents. Any information that we subsequently file with the SEC that is incorporated by reference as described above will automatically update and supersede any previous information that is part of this prospectus.

You may obtain any of the documents incorporated by reference in this prospectus from the SEC through the SEC’s website at the address provided above. You may also request and we will provide, free of charge, a copy of any document incorporated by reference in this prospectus (excluding exhibits to such document unless an exhibit is specifically incorporated by reference in the document) by visiting our investor relations website at <http://investors.phunware.com> or by writing, e-mailing or calling us at the following address or telephone number:

Phunware, Inc.  
Attention: Investor Relations  
7800 Shoal Creek Blvd., Suite 230-S  
Austin, Texas 78757  
[investorrelations@phunware.com](mailto:investorrelations@phunware.com)  
(512) 394-6837

Due to the ongoing COVID-19 pandemic, our Austin, Texas headquarters are currently not staffed to regularly receive correspondence via mail. For faster response, requests for documents incorporated by reference can be made via email to [investorrelations@phunware.com](mailto:investorrelations@phunware.com).

You should rely only on the information contained in, or incorporated by reference into, this prospectus, in any accompanying prospectus supplement or in any free writing prospectus filed by us with the SEC. We have not authorized anyone to provide you with different or additional information. We are not offering to sell or soliciting any offer to buy any securities in any jurisdiction where the offer or sale is not permitted. You should

not assume that the information in this prospectus or in any document incorporated by reference is accurate as of any date other than the date on the front cover of the applicable document.

## WHERE YOU CAN FIND MORE INFORMATION

The registration statement that we have filed with the SEC registers the securities offered by this prospectus under the Securities Act. The registration statement, including the exhibits to it, contains additional relevant information about us. The rules and regulations of the SEC allow us to omit some information included in the registration statement from this prospectus.

The Company files reports, proxy statements and other information with the SEC as required by the Exchange Act. You can read the Company's filings with the SEC, including this prospectus, over the internet at the SEC's website at <http://www.sec.gov>. You may also read and copy any document the Company files with the SEC at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You may also obtain copies of the materials described above at prescribed rates by writing to the SEC, Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549.

We also make available free of charge on the Investors section of our website, <http://www.phunware.com>, all materials that we file electronically with the SEC, including our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Section 16 reports and amendments to those reports as soon as reasonably practicable after such materials are electronically filed with, or furnished to, the SEC. Information contained on our website or any other website is not incorporated by reference into, and does not constitute a part of, this prospectus.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the various expenses expected to be incurred by the Company in connection with the sale and distribution of the securities being registered hereby, other than underwriting discounts and commissions. All such expenses will be borne by the Company. All amounts are estimated except the SEC registration fee.

SEC registration fee	\$	2,021.59
Accounting fees and expenses		5,000.00
Legal fees and expenses		15,000.00
Printing expenses		500.00
Miscellaneous fees and expenses		500.00
Total	\$	<u>23,021.59</u>

**Item 15. Indemnification of Directors and Officers**

As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our amended and restated certificate of incorporation and amended and restated bylaws that limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to us or our stockholders; (ii) any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (iii) any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or (iv) any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our amended and restated certificate of incorporation also authorizes us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws provide that (i) we may indemnify our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; (ii) we may advance expenses to our directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and (iii) the rights provided in our amended and restated bylaws are not exclusive.

Our amended and restated certificate of incorporation and our amended and restated bylaws provide for the indemnification provisions described above and elsewhere herein. We have entered into separate indemnification agreements with our directors and officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. In addition, we have purchased a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment in some circumstances. These indemnification provisions and the

indemnification agreements may be sufficiently broad to permit indemnification of directors and officers for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended (the "Securities Act").

#### **Item 16. Exhibits and Financial Statement Schedules**

A list of the exhibits required by Item 601 of Regulation S-K are listed below in the "Exhibit Index" are part of this Registration Statement and are incorporated herein by reference.

#### **Item 17. Undertakings**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i), (ii) and (iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are incorporated by reference in the Registration Statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) (A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the Registration Statement as of the date the filed prospectus was deemed part of and included in the Registration Statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the Registration Statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the Registration Statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a Registration Statement or prospectus that is part of the Registration Statement or made in a document incorporated or deemed incorporated by reference into the Registration Statement or prospectus that is part of the Registration Statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the Registration Statement or prospectus that was part of the Registration Statement or made in any such document immediately prior to such effective date.

(ii) Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than the registration statement relying on Rule 430B or other prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## EXHIBIT INDEX

Exhibit No.	Description
4.1*	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
4.2*	<a href="#">Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
4.3*	<a href="#">Certificate of Designation (Incorporated by reference to Exhibit 3.3 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on January 2, 2019).</a>
4.4*	<a href="#">Specimen common stock certificate of the Registrant (Incorporated by reference to Exhibit 4.3 of the Registrant's Form S-4/A (File No. 333-224227), filed with the SEC on November 6, 2018).</a>
5.1**	<a href="#">Opinion of Winstead PC.</a>
10.1*	<a href="#">Form of Security Purchase Agreement (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.2*	<a href="#">Form of Series A Convertible Note (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.3*	<a href="#">Form of Series B Convertible Note (Incorporated by reference to Exhibit 10.3 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.4*	<a href="#">Form of Note Purchase Agreement (Incorporated by reference to Exhibit 10.4 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.5*	<a href="#">Form of Secured Promissory Note (Incorporated by reference to Exhibit 10.5 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.6*	<a href="#">Form of Master Netting Agreement (Incorporated by reference to Exhibit 10.6 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.7*	<a href="#">Form of Warrant (Incorporated by reference to Exhibit 10.7 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
10.8*	<a href="#">Form of Registration Rights Agreement (Incorporated by reference to Exhibit 10.8 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on July 16, 2020).</a>
23.1**	<a href="#">Consent of Marcum LLP.</a>
23.2**	<a href="#">Consent of Winstead PC (included in Exhibit 5.1).</a>
24.1*	<a href="#">Power of Attorney.</a>

\* Previously filed.

\*\* Filed herewith.



**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, hereunto duly authorized, in the City of Austin, State of Texas, on October 9, 2020.

**PHUNWARE, INC.**

By: /s/ Alan S. Knitowski  
Alan S. Knitowski  
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities set forth opposite their names and on October 9, 2020.

<u>Name</u>	<u>Title</u>
<u>/s/ Alan S. Knitowski</u> Alan S. Knitowski	Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Matt Aune</u> Matt Aune	Chief Financial Officer (Principal Accounting and Financial Officer)
<u>*</u> Keith Cowan	Director
<u>*</u> Randall Crowder	Chief Operating Officer and Director
<u>*</u> Eric Manlunas	Director
<u>*</u> Lori Tauber Marcus	Director
<u>*</u> Blythe Masters	Director
<u>*</u> Kathy Tan Mayor	Director
<u>*</u> George Syllantavos	Director

\* By: /s/ Alan S. Knitowski  
Alan S. Knitowski  
Attorney-in-Fact

October 9, 2020

Phunware Inc.  
7800 Shoal Creek Boulevard  
Suite 230-S  
Austin, Texas 78757

Ladies and Gentlemen:

We have acted as counsel to Phunware Inc., a Delaware corporation (the "Company"), in connection with the filing with the Securities and Exchange Commission (the "SEC") of a registration statement on Form S-3 as amended to date (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the resale by a Company stockholder (the "Selling Stockholder"), as set forth in the Registration Statement, of an aggregate of 18,314,769 shares (the "Conversion Shares") of common stock, par value \$0.0001 per share ("Common Stock"), issuable upon conversion of a Series A Senior Convertible Note (the "Series A Note") and of an aggregate of 2,160,000 shares (the "Warrant Shares," and together with the Conversion Shares, the "Registered Shares") of Common Stock upon the exercise of a Warrant to Purchase Common Stock (the "Warrant") issued by the Company in a private placement consummated on July 15, 2020.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement, as amended, (ii) the Series A Note, (iii) the Warrant, (iv) the Securities Purchase Agreement dated July 14, 2020 between the Company and the Selling Stockholder, (v) the Registration Rights Agreement dated July 14, 2020 between the Company and the Selling Stockholder, (vi) the Certificate of Incorporation of the Company, as currently in effect; (vii) the Amended and Restated Bylaws of the Company, as currently in effect; and (viii) such other records, certificates and documents as we have deemed appropriate or necessary for the purposes of this opinion. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others, and such other documents, certificates and records, as we have deemed necessary or appropriate as a basis for the opinions set forth herein.

In our examination, we have assumed and have not verified (i) the legal capacity of all natural persons; (ii) the genuineness of all signatures; (iii) the authenticity of all documents submitted to us as originals; (iv) the conformity with the originals of all documents supplied to us as copies; (v) the accuracy and completeness of all corporate records and documents made available to us by the Company and (vi) that the foregoing documents, in the form submitted to us for our review, have not been altered or amended in any respect material to our opinions stated herein. We have relied as to factual matters upon certificates from officers of the Company and certificates and other documents from public officials and government agencies and departments and we have assumed the accuracy and authenticity of such certificates and documents.

With respect to our opinions as to the Registered Shares, we have also assumed that (i) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective and will comply with all applicable laws; (ii) all Registered Shares will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and any applicable prospectus supplement filed in connection therewith (each a "Prospectus"); and (iii) a Prospectus, if required, will have been delivered and filed with the SEC describing the Registered Shares offered thereby.

Based on the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that (1) the Conversion Shares, when issued by the Company upon conversion of the Convertible Notes pursuant to their terms and conditions, will be validly issued, fully paid and non-assessable and (2) the Warrant Shares, when issued by the Company upon the valid exercise thereof in accordance with the terms of the

Warrant and payment of the consideration required in connection therewith is made to the Company, will be validly issued, fully paid and non-assessable.

Our opinion herein is expressed solely as to the Delaware General Corporation Law (including, to the extent applicable, Delaware statutory and constitutional provisions and reported judicial decisions interpreting these laws), the laws of the United States. We express no opinion as to the laws of any other jurisdiction. The opinion expressed herein is given as of this date, and we do not undertake to supplement this opinion with respect to any events or changes occurring subsequent to the date of this letter. The opinion expressed in this letter is provided as a legal opinion only and not as any guarantee or warranty of the matters discussed herein, and such opinion is strictly limited to the matters stated herein, and no other opinion may be implied therefrom.

We hereby consent to the reference to our firm under the heading "Legal Matters" in the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are "experts" within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

**WINSTEAD PC**

By: /s/ Alex R. Allemann  
Alex R. Allemann  
Authorized Signatory

Independent Registered Public Accounting Firm's Consent

We consent to the incorporation by reference in this Registration Statement of Phunware, Inc. (the "Company") on FormS-3 Amendment No. 1 (File No. 333-248618) of our report dated March 30, 2020, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Phunware, Inc. as of December 31, 2019 and 2018 and for each of the two years in the period ended December 31, 2019, which report appears in the Annual Report on Form 10-K of the Company for the year ended December 31, 2019. We also consent to the reference to our Firm under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

Our report on the consolidated financial statements refers to a change in the method of accounting for revenue in 2019 due to the adoption of the guidance in ASC 606 *Revenue from Contracts with Customers*.

/s/ Marcum LLP

Marcum LLP  
Houston, TX  
October 9, 2020